

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke  
Probation Against:

DARRYL STANLEY MITCHELL  
24341 St. Thomas Avenue  
Moreno Valley, CA 92551

Registered Nursing License No. 370543

Respondent

Case No. 98-175

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order are hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

***NOTE: The following technical error in the Stipulated Settlement and Disciplinary Order is corrected, as follows: Page 2, line 4 should read as "No. 98-175."***

This Decision shall become effective on April 15, 2010.

IT IS SO ORDERED March 16, 2010.



\_\_\_\_\_  
President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Petition to Revoke  
12 Probation Against:

13 DARRYL STANLEY MITCHELL  
24341 St. Thomas Avenue  
14 Moreno Valley, CA 92551

15 Registered Nurse No. 370543

16 Respondent.

Case No. 98-175

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

17  
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Interim Executive Officer of the  
22 Board of Registered Nursing. She brought this action solely in her official capacity and is  
23 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,  
24 by Diane de Kervor, Deputy Attorney General.

25 2. Respondent Darryl Stanley Mitchell, RN (Respondent) is representing himself in this  
26 proceeding and has chosen not to exercise his right to be represented by counsel.

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3. On or about March 31, 1984, the Board of Registered Nursing issued Registered Nurse No. 370543 to Darryl Stanley Mitchell, RN (Respondent). The Registered Nurse license was in full force and effect at all times relevant to the charges brought in Petition to Revoke Probation No. 2006-2 and will expire on April 30, 2010, unless renewed.

## JURISDICTION

4. Petition to Revoke Probation No. 98-175 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on August 24, 2009. Respondent timely filed his Notice of Defense contesting the Petition to Revoke Probation. A copy of Petition to Revoke Probation No. 98-175 is attached as Exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Petition to Revoke Probation No. 98-175. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Petition to Revoke Probation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Petition to Revoke Probation No. 98-175.

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1           9.     Respondent agrees that his Registered Nurse license is subject to discipline and he  
2 agrees to be bound by the Board of Registered Nursing (Board)'s imposition of discipline as set  
3 forth in the Disciplinary Order below.

4                                   RESERVATION

5           10.    The admissions made by Respondent herein are only for the purposes of this  
6 proceeding, or any other proceedings in which the Board of Registered Nursing or other  
7 professional licensing agency is involved, and shall not be admissible in any other criminal or  
8 civil proceeding.

9                                   CONTINGENCY

10          11.    This stipulation shall be subject to approval by the Board of Registered Nursing.  
11 Respondent understands and agrees that counsel for Complainant and the staff of the Board of  
12 Registered Nursing may communicate directly with the Board regarding this stipulation and  
13 settlement, without notice to or participation by Respondent. By signing the stipulation,  
14 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the  
15 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this  
16 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of  
17 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between  
18 the parties, and the Board shall not be disqualified from further action by having considered this  
19 matter.

20          12.    The parties understand and agree that facsimile copies of this Stipulated Settlement  
21 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and  
22 effect as the originals.

23          13.    In consideration of the foregoing admissions and stipulations, the parties agree that  
24 the Board may, without further notice or formal proceeding, issue and enter the following  
25 Disciplinary Order:

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**DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that Registered Nurse license No. 370543 issued to Respondent Darryl Stanley Mitchell, RN (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

**Severability Clause.** Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

**Criminal Court Orders:** If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. **Comply with the Board's Probation Program.** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, Respondent's license shall be fully restored.

3. **Report in Person.** Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

1                   4.     **Residency, Practice, or Licensure Outside of State.** Periods of residency  
2 or practice as a registered nurse outside of California shall not apply toward a reduction of this  
3 probation time period. Respondent's probation is tolled, if and when he resides outside of  
4 California. Respondent must provide written notice to the Board within 15 days of any change of  
5 residency or practice outside the state, and within 30 days prior to re-establishing residency or  
6 returning to practice in this state.

7             Respondent shall provide a list of all states and territories where he has ever been licensed  
8 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide  
9 information regarding the status of each license and any changes in such license status during the  
10 term of probation. Respondent shall inform the Board if he applies for or obtains a new nursing  
11 license during the term of probation.

12                   5.     **Submit Written Reports.** Respondent, during the period of probation,  
13 shall submit or cause to be submitted such written reports/declarations and verification of actions  
14 under penalty of perjury, as required by the Board. These reports/declarations shall contain  
15 statements relative to Respondent's compliance with all the conditions of the Board's Probation  
16 Program. Respondent shall immediately execute all release of information forms as may be  
17 required by the Board or its representatives.

18             Respondent shall provide a copy of this Decision to the nursing regulatory agency in every  
19 state and territory in which he has a registered nurse license.

20                   6.     **Function as a Registered Nurse.** Respondent, during the period of  
21 probation, shall engage in the practice of registered nursing in California for a minimum of 24  
22 hours per week for 6 consecutive months or as determined by the Board.

23             For purposes of compliance with the section, "engage in the practice of registered nursing"  
24 may include, when approved by the Board, volunteer work as a registered nurse, or work in any  
25 non-direct patient care position that requires licensure as a registered nurse.

26             The Board may require that advanced practice nurses engage in advanced practice nursing  
27 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.  
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1 If Respondent has not complied with this condition during the probationary term, and  
2 Respondent has presented sufficient documentation of his good faith efforts to comply with this  
3 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an  
4 extension of Respondent's probation period up to one year without further hearing in order to  
5 comply with this condition. During the one year extension, all original conditions of probation  
6 shall apply.

7           **7. Employment Approval and Reporting Requirements.** Respondent shall  
8 obtain prior approval from the Board before commencing or continuing any employment, paid or  
9 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all  
10 performance evaluations and other employment related reports as a registered nurse upon request  
11 of the Board.

12 Respondent shall provide a copy of this Decision to his employer and immediate  
13 supervisors prior to commencement of any nursing or other health care related employment.

14 In addition to the above, Respondent shall notify the Board in writing within seventy-two  
15 (72) hours after he obtains any nursing or other health care related employment. Respondent  
16 shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated,  
17 regardless of cause, from any nursing, or other health care related employment with a full  
18 explanation of the circumstances surrounding the termination or separation.

19           **8. Supervision.** Respondent shall obtain prior approval from the Board  
20 regarding Respondent's level of supervision and/or collaboration before commencing or  
21 continuing any employment as a registered nurse, or education and training that includes patient  
22 care.

23 Respondent shall practice only under the direct supervision of a registered nurse in good  
24 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods  
25 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are  
26 approved.

27 Respondent's level of supervision and/or collaboration may include, but is not limited to the  
28 following:

1 (a) Maximum - The individual providing supervision and/or collaboration is present in  
2 the patient care area or in any other work setting at all times.

3 (b) Moderate - The individual providing supervision and/or collaboration is in the patient  
4 care unit or in any other work setting at least half the hours Respondent works.

5 (c) Minimum - The individual providing supervision and/or collaboration has person-to-  
6 person communication with Respondent at least twice during each shift worked.

7 (d) Home Health Care - If Respondent is approved to work in the home health care  
8 setting, the individual providing supervision and/or collaboration shall have person-to-person  
9 communication with Respondent as required by the Board each work day. Respondent shall  
10 maintain telephone or other telecommunication contact with the individual providing supervision  
11 and/or collaboration as required by the Board during each work day. The individual providing  
12 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to  
13 patients' homes visited by Respondent with or without Respondent present.

14 9. **Employment Limitations.** Respondent shall not work for a nurse's  
15 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a  
16 traveling nurse, or for an in-house nursing pool.

17 Respondent shall not work for a licensed home health agency as a visiting nurse unless the  
18 registered nursing supervision and other protections for home visits have been approved by the  
19 Board. Respondent shall not work in any other registered nursing occupation where home visits  
20 are required.

21 Respondent shall not work in any health care setting as a supervisor of registered nurses.  
22 The Board may additionally restrict Respondent from supervising licensed vocational nurses  
23 and/or unlicensed assistive personnel on a case-by-case basis.

24 Respondent shall not work as a faculty member in an approved school of nursing or as an  
25 instructor in a Board approved continuing education program.

26 Respondent shall work only on a regularly assigned, identified and predetermined  
27 worksite(s) and shall not work in a float capacity.

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1 If Respondent is working or intends to work in excess of 40 hours per week, the Board may  
2 request documentation to determine whether there should be restrictions on the hours of work.

3 10. **Complete a Nursing Course(s).** Respondent, at his own expense, shall  
4 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later  
5 than six months prior to the end of his probationary term.

6 Respondent shall obtain prior approval from the Board before enrolling in the course(s).  
7 Respondent shall submit to the Board the original transcripts or certificates of completion for the  
8 above required course(s). The Board shall return the original documents to Respondent after  
9 photocopying them for its records.

10 11. **Violation of Probation.** If Respondent violates the conditions of his  
11 probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside  
12 the stay order and impose the stayed discipline (revocation/suspension) of Respondent's license.

13 If during the period of probation, an accusation or petition to revoke probation has been  
14 filed against Respondent's license or the Attorney General's Office has been requested to prepare  
15 an accusation or petition to revoke probation against Respondent's license, the probationary  
16 period shall automatically be extended and shall not expire until the accusation or petition has  
17 been acted upon by the Board.

18 12. **License Surrender.** During Respondent's term of probation, if he ceases  
19 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of  
20 probation, Respondent may surrender his license to the Board. The Board reserves the right to  
21 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to  
22 take any other action deemed appropriate and reasonable under the circumstances, without further  
23 hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no  
24 longer be subject to the conditions of probation.

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1 Surrender of Respondent's license shall be considered a disciplinary action and shall  
2 become a part of Respondent's license history with the Board. A registered nurse whose license  
3 has been surrendered may petition the Board for reinstatement no sooner than the following  
4 minimum periods from the effective date of the disciplinary decision:

5 (1) Two years for reinstatement of a license that was surrendered for any reason other  
6 than a mental or physical illness; or

7 (2) One year for a license surrendered for a mental or physical illness.

8 13. **Physical Examination.** Within 45 days of the effective date of this  
9 Decision, Respondent, at his expense, shall have a licensed physician, nurse practitioner, or  
10 physician assistant, who is approved by the Board before the assessment is performed, submit an  
11 assessment of the Respondent's physical condition and capability to perform the duties of a  
12 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If  
13 medically determined, a recommended treatment program will be instituted and followed by the  
14 Respondent with the physician, nurse practitioner, or physician assistant providing written reports  
15 to the Board on forms provided by the Board.

16 If Respondent is determined to be unable to practice safely as a registered nurse, the  
17 licensed physician, nurse practitioner, or physician assistant making this determination shall  
18 immediately notify the Board and Respondent by telephone, and the Board shall request that the  
19 Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall  
20 immediately cease practice and shall not resume practice until notified by the Board. During this  
21 period of suspension, Respondent shall not engage in any practice for which a license issued by  
22 the Board is required until the Board has notified Respondent that a medical determination  
23 permits Respondent to resume practice. This period of suspension will not apply to the reduction  
24 of this probationary time period.

25 If Respondent fails to have the above assessment submitted to the Board within the 45-day  
26 requirement, Respondent shall immediately cease practice and shall not resume practice until  
27 notified by the Board. This period of suspension will not apply to the reduction of this  
28 probationary time period. The Board may waive or postpone this suspension only if significant,

1 documented evidence of mitigation is provided. Such evidence must establish good faith efforts  
2 by Respondent to obtain the assessment, and a specific date for compliance must be provided.  
3 Only one such waiver or extension may be permitted.

4           14.     **Participate in Treatment/Rehabilitation Program for Chemical**  
5 **Dependence.** Respondent, at his expense, shall successfully complete during the probationary  
6 period or shall have successfully completed prior to commencement of probation a Board-  
7 approved treatment/rehabilitation program of at least six months duration. As required, reports  
8 shall be submitted by the program on forms provided by the Board. If Respondent has not  
9 completed a Board-approved treatment/rehabilitation program prior to commencement of  
10 probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in  
11 a program. If a program is not successfully completed within the first nine months of probation,  
12 the Board shall consider Respondent in violation of probation.

13         Based on Board recommendation, each week Respondent shall be required to attend at least  
14 one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous,  
15 Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board.  
16 If a nurse support group is not available, an additional 12-step meeting or equivalent shall be  
17 added. Respondent shall submit dated and signed documentation confirming such attendance to  
18 the Board during the entire period of probation. Respondent shall continue with the recovery plan  
19 recommended by the treatment/rehabilitation program or a licensed mental health examiner  
20 and/or other ongoing recovery groups.

21           15.     **Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent  
22 shall completely abstain from the possession, injection or consumption by any route of all  
23 controlled substances and all psychotropic (mood altering) drugs, including alcohol, except when  
24 the same are ordered by a health care professional legally authorized to do so as part of  
25 documented medical treatment. Respondent shall have sent to the Board, in writing and within  
26 fourteen (14) days, by the prescribing health professional, a report identifying the medication,  
27 dosage, the date the medication was prescribed, the Respondent's prognosis, the date the  
28 medication will no longer be required, and the effect on the recovery plan, if appropriate.

1 Respondent shall identify for the Board a single physician, nurse practitioner or physician  
2 assistant who shall be aware of Respondent's history of substance abuse and will coordinate and  
3 monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-  
4 altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report  
5 to the Board on a quarterly basis Respondent's compliance with this condition. If any substances  
6 considered addictive have been prescribed, the report shall identify a program for the time limited  
7 use of any such substances.

8 The Board may require the single coordinating physician, nurse practitioner, or physician  
9 assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive  
10 medicine.

11 16. **Submit to Tests and Samples.** Respondent, at his expense, shall  
12 participate in a random, biological fluid testing or a drug screening program which the Board  
13 approves. The length of time and frequency will be subject to approval by the Board.  
14 Respondent is responsible for keeping the Board informed of Respondent's current telephone  
15 number at all times. Respondent shall also ensure that messages may be left at the telephone  
16 number when he is not available and ensure that reports are submitted directly by the testing  
17 agency to the Board, as directed. Any confirmed positive finding shall be reported immediately  
18 to the Board by the program and Respondent shall be considered in violation of probation.

19 In addition, Respondent, at any time during the period of probation, shall fully cooperate  
20 with the Board or any of its representatives, and shall, when requested, submit to such tests and  
21 samples as the Board or its representatives may require for the detection of alcohol, narcotics,  
22 hypnotics, dangerous drugs, or other controlled substances.

23 If Respondent has a positive drug screen for any substance not legally authorized and not  
24 reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board  
25 files a petition to revoke probation or an accusation, the Board may suspend Respondent from  
26 practice pending the final decision on the petition to revoke probation or the accusation. This  
27 period of suspension will not apply to the reduction of this probationary time period.  
28

1 If Respondent fails to participate in a random, biological fluid testing or drug screening  
2 program within the specified time frame, Respondent shall immediately cease practice and shall  
3 not resume practice until notified by the Board. After taking into account documented evidence  
4 of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may  
5 suspend Respondent from practice pending the final decision on the petition to revoke probation  
6 or the accusation. This period of suspension will not apply to the reduction of this probationary  
7 time period.

8 17. **Mental Health Examination.** Respondent shall, within 45 days of the  
9 effective date of this Decision, have a mental health examination including psychological testing  
10 as appropriate to determine his capability to perform the duties of a registered nurse. The  
11 examination will be performed by a psychiatrist, psychologist or other licensed mental health  
12 practitioner approved by the Board. The examining mental health practitioner will submit a  
13 written report of that assessment and recommendations to the Board. All costs are the  
14 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a  
15 result of the mental health examination will be instituted and followed by Respondent.

16 If Respondent is determined to be unable to practice safely as a registered nurse, the  
17 licensed mental health care practitioner making this determination shall immediately notify the  
18 Board and Respondent by telephone, and the Board shall request that the Attorney General's  
19 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease  
20 practice and may not resume practice until notified by the Board. During this period of  
21 suspension, Respondent shall not engage in any practice for which a license issued by the Board  
22 is required, until the Board has notified Respondent that a mental health determination permits  
23 Respondent to resume practice. This period of suspension will not apply to the reduction of this  
24 probationary time period.

25 If Respondent fails to have the above assessment submitted to the Board within the 45-day  
26 requirement, Respondent shall immediately cease practice and shall not resume practice until  
27 notified by the Board. This period of suspension will not apply to the reduction of this  
28 probationary time period. The Board may waive or postpone this suspension only if significant,

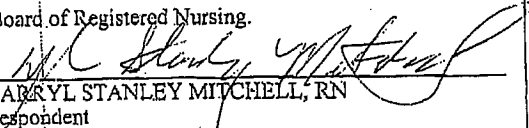
1 documented evidence of mitigation is provided. Such evidence must establish good faith efforts  
2 by Respondent to obtain the assessment, and a specific date for compliance must be provided.  
3 Only one such waiver or extension may be permitted.

4 18. **Therapy or Counseling Program.** Respondent, at his expense, shall  
5 participate in an on-going counseling program until such time as the Board releases him from this  
6 requirement and only upon the recommendation of the counselor. Written progress reports from  
7 the counselor will be required at various intervals.

8 ACCEPTANCE

9 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the  
10 stipulation and the effect it will have on my Registered Nurse. I enter into this Stipulated  
11 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be  
12 bound by the Decision and Order of the Board of Registered Nursing.

13 DATED: 12/21/09

14   
DARRYL STANLEY MITCHELL, RN  
Respondent

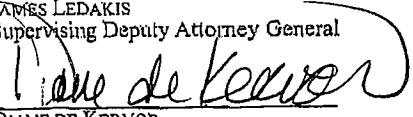
15 ENDORSEMENT

16 The foregoing Stipulated Settlement and Disciplinary Order are hereby respectfully  
17 submitted for consideration by the Board of Registered Nursing of the Department of Consumer  
18 Affairs.

19 Dated: November 20, 2009

20 Respectfully Submitted,

21 EDMUND G. BROWN JR.  
Attorney General of California  
22 JAMES LEDAKIS  
Supervising Deputy Attorney General

23   
24 DIANE DE KERVOR  
25 Deputy Attorney General  
26 Attorneys for Complainant  
27  
28

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of the State of California

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Supervising Deputy Attorney General

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8 Attorneys for Complainant

9  
10 **BEFORE THE**  
11 **BOARD OF REGISTERED NURSING**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
13 **STATE OF CALIFORNIA**

12 In the Matter of the Petition to Revoke Probation  
13 Against:

Case No. **98-175**

14 DARRYL STANLEY MITCHELL

24341 St. Thomas Avenue

15 Moreno Valley, CA 92551

**PETITION TO REVOKE  
PROBATION**

16 Registered Nurse License No. 370543

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, MEd., R.N. (Complainant) brings this Petition to Revoke  
22 Probation solely in her official capacity as the Interim Executive Officer of the Board of  
23 Registered Nursing, Department of Consumer Affairs.

24 2. On or about March 31, 1984, the Board of Registered Nursing issued Registered  
25 Nurse License No. 370543 to Darryl Stanley Mitchell (Respondent). If not renewed, the license  
26 will expire on April 30, 2010.

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PREVIOUS DISCIPLINE

3. On June 11, 1998, the Board filed a disciplinary action against Respondent titled "In the Matter of the Accusation Against Darryl Stanley Mitchell," Case No. 98-175. The first cause for disciplinary action was brought under Code section 821 for noncompliance with the Board's order to submit to a psychiatric examination pursuant to Code section 820. The second cause was pursuant to Code section 490 and 2761(f) for driving under the influence convictions in 1984, 1986, 1990, and 1992. On May 14, 2000, pursuant to a stipulated settlement of the Accusation, Respondent's registered nurse license was revoked. However, the revocation was stayed and Respondent's license was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

4. On June 10, 2002, the Board filed a disciplinary action against Respondent titled "In the Matter of the Petition to Revoke Probation Against Darryl Stanley Mitchell," Case No. 98-175. The petition was based upon Respondent's failure to appear at probation interviews and meetings; his failure to submit required reports and documentation regarding his failure to submit urine specimens and his failure to appear for urine specimen screenings at the required times; his failure to participate in random biological fluid testing and drug testings; and his failure to comply with the terms and conditions of his probation. After an administrative hearing, the stay of revocation was set aside and the Board revoked Respondent's license effective January 22, 2003. A copy of that decision is attached as Exhibit B and is incorporated by reference.

5. On August 31, 2006, based upon his application, the Board reinstated Respondent's nursing license in the Matter of the Petition for Reinstatement of Darryl S. Mitchell, OAH number L-2006050020. Respondent's registered nurse license was immediately revoked. However, the revocation was stayed and Respondent's license was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit C and is incorporated by reference.

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- A. August 17, 2007 call resulted in a positive test for alcohol
- B. October 11, 2007 call resulted in a do not call/ missed test
- C. September 18, 2008, call resulted in a positive test for alcohol
- D. November 19, 2008, call resulted in a dilute test
- E. January 12, 2009, call resulted in a positive test for alcohol
- F. February 2, 2009, call resulted in a positive test for alcohol
- G. February 17, 2009, call resulted in a positive test for alcohol
- H. June 2, 2009, call resulted in a positive test for alcohol
- I. June 16, 2009, call in which observation was required was not verified.

On March 3, 2009, and again on July 1, 2009, the Board sent a letter to Respondent notifying him of these violations. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 17.

### **SECOND CAUSE TO REVOKE PROBATION**

(Failure to Comply and Cooperate With Probation Monitoring)

9. At all times after the effective date of Respondent's probation, Condition 2 required Respondent to comply with the terms and conditions of his. Respondent has failed to comply with the terms and conditions of his probation, as noted in paragraph 8 above, which is herein incorporated by reference. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 2.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
3 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking the probation that was granted by the Board of Registered Nursing in  
5 the Matter of the Petition for Reinstatement of Darryl S. Mitchell, OAH number L-2006050020.  
6 and imposing the disciplinary order that was stayed thereby revoking Registered Nurse License  
7 No. 370543 issued to Darryl Stanley Mitchell;

8 2. Taking such other and further action as deemed necessary and proper.

9 DATED: 7/31/09

10 *Louise R. Bailey*  
11 LOUISE R. BAILEY, M.Ed., RN  
12 Interim Executive Officer  
13 Board of Registered Nursing  
14 Department of Consumer Affairs  
15 State of California  
16 Complainant  
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**Exhibit C**

**Decision and Order**

**In the Matter of the Petition for Reinstatement of  
Darryl Stanley Mitchell OAH Case No. L2006050020**

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for  
Reinstatement:

Darryl S. Mitchell

Registered Nurse License No. 370543

Petitioner.

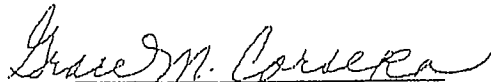
OAH No. L2006050020

DECISION

The attached Decision of the Board of Registered Nursing is hereby adopted by the Board as its Decision in the above-entitled matter.

This Decision shall become effective on August 31, 2006.

IT IS SO ORDERED this 3<sup>rd</sup> day of August 2006.



Vice-President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for  
Reinstatement of:

DARRYL STANLEY MITCHELL

Petitioner.

OAH No. L2006050020

**DECISION**

The Board of Registered Nursing heard this matter on June 8, 2006, in San Diego, California. Board members present and participating were Grace M. Corse, R.N., Vice-President; Elizabeth O. Dietz, R.N., C.S.-N.P.; Janice Glaab; Orlando H. Pile, M.D.; and Susanne Phillips, M.S.N., R.N., A.P.R.N.-B.C., F.N.P. Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, presided.

Deputy Attorney General Ron Espinoza represented the Office of the Attorney General.

Petitioner Darryl Stanley Mitchell appeared and represented himself.

The matter was submitted for decision on June 8, 2006.

**FACTUAL FINDINGS**

1. On March 31, 1984, the Board of Registered Nursing issued registered nurse license number 370543 to petitioner Darryl Stanley Mitchell.

2. Effective May 14, 2000, pursuant to a stipulated settlement and disciplinary order, petitioner's license was revoked by the Board. The revocation was stayed, however, and petitioner was placed on probation for three years. The disciplinary action was taken under Business and Professions Code section 490 and section 2761, subdivision (f), for DUI convictions in 1984, 1986, 1990 and 1992, and under Business and Professions Code section 821 for noncompliance with the Board's order to submit to a psychiatric examination.

3. Effective January 22, 2003, following an administrative hearing, the stay of revocation was set aside and petitioner's license was revoked by the Board. The disciplinary action was taken because petitioner violated the conditions of his probation by failing to

appear for two probation interviews, failing to appear for drug testing five times, and appearing late for drug testing three times.

4. On February 24, 2006, petitioner filed a petition for reinstatement with the Board.

5. Petitioner accepts responsibility for the probation violations that caused his license to be revoked, although he believes he did not fail to appear for drug testing as many times as was found. He concedes that he did not have a good attitude when he was on probation – he resented being disciplined for convictions that had happened years earlier. Since 2003, when he lost his license, petitioner has maintained his sobriety and attended AA meetings twice a week.

6. On November 1, 2005, petitioner signed a two-year contract with a nurse support group program. He attends weekly support group meetings, submits to weekly drug tests (the results of which have all been negative), and documents his attendance of at least three 12-step meetings per week. Petitioner recently took a relapse prevention workshop given by Joyce Francis, the support group facilitator.

7. Joyce Francis is a certified alcohol and drug counselor who has been affiliated with license probation and diversion programs for almost 20 years. She wrote a letter supporting petitioner's request for license reinstatement, and she came to the hearing to testify on his behalf. Francis has no doubt that petitioner has been sober since 1992, and she believes he should be given a chance to return to nursing. In her letter, dated February 1, 2006, Francis wrote, in relevant part:

Darryl is becoming a valuable role model for newer group members. He is able to offer much insightful feedback – and he accepts group feedback with willingness to follow their suggestions. He has bonded with his peers.

Most notable is Darryl's commitment to regain his license and be able to practice in his chosen profession.

I have known Darryl for several years and was witness to his first attempt at Diversion. The changes this time are very apparent. He is totally focused on maintaining compliance, he is willing to do whatever is asked of him with good attitude.

8. For the last six years, petitioner has been the chief executive officer of Flex Nursing Services, Inc., a temporary nursing agency in Los Angeles. His responsibilities include finances, payroll, workers' compensation insurance, contracts and background checks. Petitioner is currently enrolled in business classes through the Riverside Community College District.

9. Petitioner misses nursing and wants to care for patients again. He asserts that he is ready to follow the Board's directions and will comply with any conditions imposed on his license.

### LEGAL CONCLUSIONS

1. Petitioner has demonstrated significant rehabilitation since his license was revoked in 2003. His voluntary commitment to the two-year nurse support group program, and his excellent record of compliance with its requirements, reflect an important change in petitioner's attitude. He is firmly committed to maintaining his sobriety, and he understands the importance of complying with requirements imposed by the Board to ensure that he is safe to practice nursing. It would not be contrary to the public interest to reinstate petitioner's registered nurse license, subject to appropriate conditions of probation, including a condition requiring petitioner to complete a refresher course before resuming the practice of nursing.

2. Cause for reinstatement of petitioner's license has been established.

### ORDER

The petition of Darryl Stanley Mitchell for reinstatement of licensure as a registered nurse is granted. A license shall be issued to petitioner. The license shall immediately be revoked, but the order of revocation shall be stayed and petitioner shall be placed on probation for a period of three (3) years on the following conditions:

Each condition of probation is separate and distinct. If any condition of this order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this order, and all other applications thereof, shall not be affected. Each condition of this order shall separately be valid and enforceable to the fullest extent permitted by law.

1. OBEY ALL LAWS: Petitioner shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by petitioner to the Board in writing within 72 hours of occurrence. To permit monitoring of compliance with this term, petitioner shall submit completed fingerprint cards and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.
2. COMPLY WITH PROBATION PROGRAM: Petitioner shall fully comply with the terms and conditions of the probation program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of his compliance. Petitioner shall inform the Board in writing within no more than 15 days of any address change and shall at all times



maintain an active, current license status with the Board, including during any period of suspension.

3. REPORT IN PERSON: During the period of probation, petitioner shall appear in person at interviews/meetings as directed by the Board or its designated representatives.
4. RESIDENCY, PRACTICE OR LICENSURE OUTSIDE OF STATE: Periods of residency or practice as a registered nurse outside of California shall not apply toward reduction of this probation time period. Petitioner's probation is tolled, if and when he resides outside of California. Petitioner must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Petitioner shall provide a list of all states and territories where he has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Petitioner shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Petitioner shall inform the Board if he applies for or obtains a new nursing license during the term of probation.

5. SUBMIT WRITTEN REPORTS: During the period of probation, petitioner shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury as required by the Board. These reports/declarations shall contain statements relative to petitioner's compliance with all the terms and conditions of the Board's probation program. Petitioner shall immediately execute all release of information forms as may be required by the Board or its representatives.

PROVIDE DECISION: Petitioner shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he has a registered nurse license.

6. FUNCTION AS A REGISTERED NURSE: Petitioner, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with this condition, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If petitioner has not complied with this condition during the probationary term but has presented sufficient documentation of his good faith efforts to comply, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of petitioner's probation period up to one year without further hearing in order to comply with this condition. During the one-year extension, all original conditions of probation shall apply.

7. EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS:

Petitioner shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Petitioner shall cause to be submitted to the Board all performance evaluations and other employment-related reports as a registered nurse upon request of the Board.

Petitioner shall provide a copy of this decision to his employer and immediate supervisors prior to commencement of any nursing or other health care-related employment.

In addition to the above, petitioner shall notify the Board in writing within 72 hours after he obtains any nursing or other health care related employment. Petitioner shall notify the Board in writing within 72 hours after he is terminated or separated, regardless of cause, from any nursing, or other health-care related employment, with a full explanation of the circumstances surrounding the termination or separation.

8. SUPERVISION: Petitioner shall obtain prior approval from the Board regarding his level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Petitioner shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Petitioner's level of supervision and/or collaboration may include, but is not limited to the following:

- a. Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

- b. Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours petitioner works.
- c. Minimum - The individual providing supervision and/or collaboration has person-to-person communication with petitioner at least twice during each shift worked.
- d. Home Health Care - If petitioner is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with him as required by the Board each work day. Petitioner shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by petitioner with or without petitioner being present.

9. EMPLOYMENT LIMITATIONS: Petitioner shall not work for a nurse's registry, in any private duty position as a registered nurse, for a temporary nurse placement agency, or for an in-house nursing pool.

Petitioner shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Petitioner shall not work in any other registered nursing occupation where home visits are required.

Petitioner shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict petitioner from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Petitioner shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Petitioner shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If petitioner is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

10. COMPLETE REFRESHER COURSE: Petitioner, at his own expense, shall enroll in and successfully complete a refresher course or equivalent set of courses as approved by representatives of the Board. Petitioner is suspended from practice until the required course work is successfully completed, but he may use his license for the limited purpose of completing clinical requirements of the course work.
11. COST RECOVERY: Petitioner is not required to pay the Board for any costs of investigation and enforcement, because the decision revoking his license did not contain an order for cost recovery.
12. VIOLATION OF PROBATION: If petitioner violates the conditions of his probation, the Board, after giving petitioner notice and an opportunity to be heard, may set aside the stay order and impose the stayed revocation of his license.

If during the period of probation, an accusation or petition to revoke probation has been filed against petitioner's license or the Attorney General's office has been requested to prepare an accusation or petition to revoke probation against petitioner's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

13. LICENSE SURRENDER - During petitioner's term of probation, if he ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, petitioner may surrender his license to the Board. The Board reserves the right to evaluate petitioner's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, petitioner will no longer be subject to the conditions of probation.

Surrender of petitioner's license shall be considered a disciplinary action and shall become a part of petitioner's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- a. Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
  - b. One year for a license surrendered for a mental or physical illness.
14. PHYSICAL EXAMINATION - Within 45 days of the effective date of this decision, petitioner, at his expense, shall have a licensed physician, nurse

practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the petitioner's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the petitioner, with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If petitioner is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and petitioner by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Petitioner shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, petitioner shall not engage in any practice for which a license issued by the Board is required until the Board has notified petitioner that a medical determination permits him to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If petitioner fails to have the above assessment submitted to the Board within the 45-day requirement, petitioner shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the petitioner to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

15. TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE - Petitioner, at his expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If petitioner has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, petitioner, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider petitioner in violation of probation.

Based on Board recommendation, each week petitioner shall be required to attend at least one, but no more than five, 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support

group is not available, an additional 12-step meeting or equivalent shall be added. Petitioner shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Petitioner shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

16. ABSTAIN FROM PSYCHOTROPIC (MOOD-ALTERING) DRUGS -

Petitioner shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood-altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Petitioner shall have sent to the Board, in writing and within 14 days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the petitioner's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Petitioner shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of petitioner's history of substance abuse and will coordinate and monitor any prescriptions for petitioner for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis petitioner's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time-limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

17. SUBMIT TO TESTS AND SAMPLES - Petitioner, at his expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. Petitioner is responsible for keeping the Board informed of his current telephone number at all times. Petitioner shall also ensure that messages may be left at the telephone number when he is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the petitioner shall be considered in violation of probation.

In addition, petitioner, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives

may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If petitioner has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend petitioner from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If petitioner fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, petitioner shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend petitioner from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

18. MENTAL HEALTH EXAMINATION - Petitioner shall, within 45 days of the effective date of this decision, have a mental health examination, including psychological testing as appropriate, to determine his capability to perform the duties of a registered nurse. The examination must be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the petitioner. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the petitioner.

If petitioner is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and petitioner by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Petitioner shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, petitioner shall not engage in any practice for which a license issued by the Board is required, until the Board has notified petitioner that a mental health determination permits petitioner to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If petitioner fails to have the above assessment submitted to the Board within the 45-day requirement, petitioner shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may

waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the petitioner to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

19. THERAPY OR COUNSELING PROGRAM - Petitioner, at his expense, shall participate in an ongoing counseling program until such time as the Board releases him from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

DATED: July 13, 2006

Grace M. Corse  
GRACE M. CORSE, R.N.  
Vice-President  
Board of Registered Nursing



Exhibit B

Decision and Order

In the Matter of the Petition to Revoke Probation Against  
Darryl Stanley Mitchell Case No. 98-175

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke  
Probation Against:

DARRYL STANLEY MITCHELL  
24341 St. Thomas Avenue  
Moreno Valley, CA 92551

Registered Nurse License No. 370543

Respondent.

Case No. 98-175

OAH No. L2002060704

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by  
the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective January 22, 2003.

IT IS SO ORDERED.

Date: December 22, 2002

Board of Registered Nursing

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*Sandra G. Erickson*

President

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke  
Probation Against:

DARRYL STANLEY MITCHELL  
24341 St. Thomas Avenue  
Moreno Valley, CA 92551  
Registered Nurse License No. 370543

Respondent.

Case No. 98-175

OAH No. L2002060704

PROPOSED DECISION

On September 9, 2002, in Riverside, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Shawn P. Cook, Deputy Attorney General, represented complainant.

John Francis Carroll, Attorney At Law, represented respondent.

The matter was submitted on September 9, 2002.

FACTUAL FINDINGS

1. On June 10, 2002, Ruth Ann Terry, M.H.N., R.N., Executive Officer, Board of Registered Nursing of the State of California (Board), filed Petition to Revoke Probation No. 98-175 in her official capacity. Respondent filed a timely Notice of Defense. Complainant amended the accusation during the hearing.

2. On March 31, 1984, the Board issued license number 370543 to respondent. On April 14, 2000, effective May 14, 2000, in a Stipulated Settlement and Disciplinary Order, the Board revoked respondent's license following his multiple convictions for driving while under the influence of drugs or alcohol. The Decision stayed the revocation and placed respondent on probation for a period of three years on terms and conditions, including:

"8. Respondent shall fully comply with the terms and conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of Respondent's compliance with the program. . .

"9. Respondent, during the period of probation, shall report in person at interviews/meetings as directed by the Board or its designated representatives. . .

"11. Respondent, during the period of probation, shall submit such written reports/declarations and verification of actions under penalty of perjury, as are required. These declarations shall contain statements relative to Respondent's compliance with all the terms and conditions of the Board's Probation Program. . .

"19. Respondent shall completely abstain from the possession, injection, or consumption by any route of all psychotropic (mood-altering) drugs, including alcohol. . .

"20. Respondent, at his expense, shall participate in a random Board-approved biological fluid testing or drug screening program. The length of time and frequency will be subject to approval by the Board. Respondent is responsible for ensuring that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and Respondent will be considered in violation of probation.

"In addition, Respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances. . .

"23. If respondent violates the conditions of his probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's license.

"If during the period of probation, an Accusation or Petition to Revoke Probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an Accusation or Petition to Revoke Probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the Accusation or Petition has been acted upon by the Board. Upon successful completion of probation, Respondent's license will be fully restored. . . ."

3. Wesley Miyamura, a probation officer with the Board, was assigned to monitor respondent's probation, and first met with respondent on May 16, 2000. This was

the orientation interview designed to inform respondent about the probation process. They reviewed each of the terms of the probation order including the terms requiring respondent to undergo drug screening. Miyamura also provided a form to respondent entitled, "Conditions of Probation—Supplement" which described respondent's obligations under the terms of probation. The drug screening provision read:

"You must participate in a drug screening program approved by your probation monitor during your entire probation term. The frequency of testing will occur at least 18 times within a 12-month period. Testing will commence within 30 days from your orientation meeting. Within this 30-day period, you must select a testing facility that meets all of the criteria specified in the Random Body Fluid Screening guidelines given to you at your meeting. You must fully comply with the rules stated in the guidelines. Excuses, testing late or not responding to telephone messages or mail will not be tolerated and will be considered violations of probation."

The form asked respondent to provide telephone numbers. He provided a home telephone number and a pager number. Miyamura gave to respondent a "Unilab packet" consisting of the documents respondent needed to provide when his urine was screened by Unilab, the lab selected to perform the drug screens.

Miyamura also gave respondent a handout entitled, "Probationer's Responsibilities for Random Body Fluid Screening (RBFS)." It described the basic rules of the Board's testing program. It informed respondent he would be contacted by telephone when a screen was due and he had a specified period of time in which to be tested, but no later than 24 hours after he was contacted by the Board or a message was left for him. It advised him if he were unable to submit the specimen as required, he had to immediately call his probation monitor and provide a written explanation or other documentation.

4. Respondent failed to appear at his probation interviews scheduled for August 16, 2000 and January 24, 2001 in violation of Condition 9 of the terms and conditions of his probation. On August 16, 2000, Miyamura called respondent at home and on his pager. He also called his work, but respondent was not there.

5. Between July 12, 2000 and August 21, 2002, respondent was directed to appear for drug screens 37 times. He failed to appear for testing five times: on January 2, January 29, February 15, July 16 and September 24, 2001. Respondent did not submit any written reports, declarations, or other documentation explaining why he did not submit the urine specimens on those dates.

6. On December 26, 2000, at 11:40 a.m., a Board representative directed respondent to submit to a drug screen. He had 24 hours to report for the screen. Respondent did not report for the drug screen until 9:35 a.m. on December 29, nearly two days later.

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On May 23, 2002, at 9:09 a.m., a Board representative directed respondent to submit to a drug screen. He had until 9:09 a.m. on May 24. Respondent reported for a drug screen at 2:15 p.m. on May 24, about five hours late.

On August 21, 2002, at 8:27 a.m., respondent was directed by a Board representative to report for a drug screen by 5:00 p.m. that day. Respondent did not report for a drug screen on August 21, instead appearing for the drug screen at 10:45 a.m. on August 22, about 17 hours and 45 minutes late.

Respondent did not submit any written reports, declarations, or other documentation explaining why he did not submit the urine specimens on December 26, 2000 and August 21, 2002 in a timely manner.

7. On January 11, 2001, after respondent had failed to appear for a drug screen on January 2, Miyamura called respondent and they spoke on the phone. Miyamura asked respondent when he had been screened last. Respondent said he did not know but he had reported as scheduled. Respondent could not provide a date of a test and indicated it had occurred about two weeks earlier.

Miyamura and respondent spoke by telephone on March 7, 2001. Miyamura told him of the past drug screen results that were missing. Respondent admitted to not being screened on January 9, at a time when he had surrendered his license. Respondent said he would contact Unilab to get four prior results.

On April 18, 2001, during a quarterly interview, respondent told Miyamura he did not go for drug screens on January 29 and February 15, 2001, and that he would try to get the results of the test on January 2.

In Miyamura's probation interview report of October 23, 2001, he indicated he forgot to discuss with respondent the missing drug screen for September 24, 2001. He indicated he left a message on respondent's answering machine advising him to work this out with his assistant.

During the quarterly meeting on January 15, 2002, Miyamura advised respondent there were no results for required screens on January 2, February 15, and July 16, 2001. Respondent said he would work that out with Miyamura's assistant. Miyamura again reminded respondent to work out the missing drug screens with his assistant during a meeting on April 24, 2002.

Miyamura called respondent on May 16, 2002, and told him he had audited respondent's file and he had uncovered more non-compliance issues than he had remembered, including five missed drug screens. Miyamura said three of them were attributed to respondent's business partnership breakup but two other dates were not explained. Respondent said he intended to go forward with a petition to the board for

reduction in penalty. During the conversation, Miyamura asked respondent if he still drank. Respondent did not reply and later, blamed Miyamura, the Board's consultant, and Unilab for his problems.

Miyamura and respondent again talked about drinking during a meeting on August 21, 2002. When Miyamura asked respondent when was the last time he drank a beer, respondent first said he did not know and then said, "I haven't consumed anything to a detectable level."

8. Respondent wrote to the Board on January 19, 2001, and indicated he was surrendering his license. He included his plastic license with the letter. Miyamura wrote back to respondent on February 15, 2001. Miyamura advised respondent he had agreed to be placed on probation and he would be scheduled for interviews and random drug screening as required by the probation. He also advised respondent that failing to comply with any portion of the probation was a violation and would lead to further disciplinary action through the Attorney General's office.

After respondent and Miyamura spoke by telephone on March 7, 2001, respondent followed up with a letter dated March 12. Respondent described the problems he faced in trying to track down test results. He indicated he did find four test results and faxed them to Miyamura. He promised he would photocopy the forms when he took a test.

9. Respondent claimed he took every test except for the two during the time when he had "resigned." Respondent had numerous opportunities to present documentary evidence to support his claim or to work out the problems or explain his failures. He furnished copies of checks to the Board which reflected his payment of some tests, but he did not show he had paid for any tests on January 2 and 9, February 15, July 16, or September 24, 2001. Respondent's testimony that the absence of the tests on those dates is a reflection of the inadequacies of Unilab's record keeping, not his failure to take the tests, is not credible.

10. Regarding the late test required on May 23, 2002, respondent wrote a note to Miyamura's assistant indicating he was late for the test because he was in San Diego, it was a holiday weekend, and the traffic was horrendous. That is not an acceptable reason. Respondent had 24 hours to have the test performed. May 23, 2002 was a Thursday. Memorial Day was Monday, May 27. If he were in San Diego on May 23, and he wanted to be tested in Los Angeles or Moreno Valley by 9:09 a.m. on May 24, he should have left San Diego early in the morning on Friday. "Holiday traffic" does not explain being five hours late for the test.

11. Respondent is the CEO of Flex Nursing Services, a nursing registry, and in the capacity, does not perform nursing functions.

12. Respondent has complied with the other conditions of probation. He has attended group meetings. All of the drug screens required by probation have been negative.

In addition, respondent was randomly tested while he was on parole, and for 18 months prior to obtaining his driver's license, and all of those tests were negative as well.

13. Respondent offered numerous letters and commendations from patients, co-workers, and employers describing his dedication and commitment to quality nursing care. Performance appraisals dated September 10, 1999 and August 28, 2000, from Cedars-Sinai Health System, where respondent worked as a clinical nurse III indicated he met or exceeded expectations in most categories

### LEGAL CONCLUSIONS

1. Cause to set aside the stay order and impose the order of revocation contained in the Board's decision of April 14, 2000 was established by Findings 2 and 4 in that respondent did not satisfy Condition 9 of the order of probation when he failed to appear at two probation interviews.

2. Cause to set aside the stay order and impose the order of revocation contained in the Board's decision of April 14, 2000 was established by Findings 2, 3, 5 and 6 in that respondent did not satisfy Condition 20 of the order of probation when he failed to submit urine specimens as directed on five occasions and submitted three specimens late.

3. Cause to set aside the stay order and impose the order of revocation contained in the Board's decision of April 14, 2000 was established by Findings 2, 3, 5 and 6 in that respondent did not satisfy Condition 11 of the order of probation when he failed to submit written reports, declarations or other documentation explaining why he did not submit urine specimens as directed on five occasions and submitted specimens late.

4. It is apparent respondent does not appreciate the importance the Board attaches to conditions of probation that seek to monitor efforts to keep a nurse with a drinking problem safe to practice nursing. From his conversations with Miyamura and his letter of January 19, 2001, he regards the disciplinary order as unfair punishment for acts that occurred long ago. With that point of view, he has taken a cavalier attitude toward his obligations by missing two meetings with his probation monitor, failing to submit five urine specimens, and submitting three others late. Random testing is designed to demonstrate compliance with the prohibition against consuming alcohol (Condition 19). Although there was no direct evidence to show respondent has been drinking in violation of this condition, respondent's actions do not provide sufficient assurance he has remained sober. Nor has respondent adequately explained why he failed to submit the five specimens and was late for three others.

Respondent denied failing to submit three tests and being late for two of the tests. His testimony was not credible. His explanations for missing two tests and being late for one were unsatisfactory. It is clear respondent has not accepted responsibility for his conduct. While recognizing that respondent has not tested positive for alcohol in two years, has



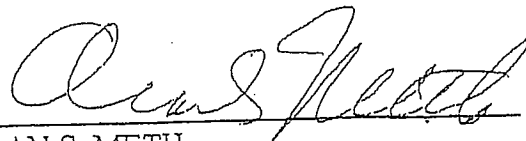
attended support groups, and his competence as a nurse is not in question, the concern in this proceeding is protection of the public. Respondent's actions while on probation show he poses a threat to the public and compel the conclusion his license should be revoked.

ORDER

The stay of the order of revocation of respondent's license issued by the Board in its Decision dated April 14, 2000 is set aside. Registered Nurse License Number 370543 issued to respondent Darryl Stanley Mitchell is hereby revoked.

DATED:

September 12, 2002



ALAN S. METH  
Administrative Law Judge  
Office of Administrative Hearings

SEP 53 PM 1:17

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**Exhibit A**

**Petition to Revoke Probation No. 98-175**

1 BILL LOCKYER, Attorney General  
of the State of California  
2 SHARON F. COHEN, R.N., State Bar No. 107140  
Supervising Deputy Attorney General  
3 California Department of Justice  
300 So. Spring Street, Suite 1702  
4 Los Angeles, CA 90013  
Telephone: (213) 897-2533  
5 Facsimile: (213) 897-2804  
6 Attorneys for Complainant

7  
8 BEFORE THE  
9 BOARD OF REGISTERED NURSING  
10 DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

11 In the Matter of the Petition to Revoke Probation  
Against:

Case No. 98-175

12 DARRYL STANLEY MITCHELL  
13 24341 St. Thomas Avenue  
Moreno Valley, California 92551  
14 Registered Nurse License No. 370543

PETITION TO REVOKE  
PROBATION

15 Respondent.

16

17 Complainant alleges:

18 PARTIES

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Petition to  
20 Revoke Probation solely in her official capacity as the Executive Officer of the Board of  
21 Registered Nursing (Board), Department of Consumer Affairs.

22 2. On or about March 31, 1984, the Board issued Registered Nurse License  
23 Number 370543 to Darryl Stanley Mitchell (Respondent). The license will expire on April 30,  
24 2004, unless renewed.

25 PROBATIONARY TERMS

26 3. On April 14, 2000, pursuant to the Stipulated Settlement and Disciplinary  
27 Order adopted by the Board in the disciplinary action entitled *In the Matter of the Accusation*  
28 *Against Darryl Stanley Mitchell*, Case Number 98-175, the Board ordered that Respondent's

1 license be revoked effective May 14, 2000. The revocation was stayed and Respondent was  
2 placed on probation for three (3) years subject to certain terms and conditions including the  
3 following:

4 a. Condition 8 states, in pertinent part, that Respondent shall fully comply  
5 with the terms and conditions of the Probation Program established by the Board and cooperate  
6 with representatives of the Board in its monitoring and investigation of Respondent's compliance  
7 with the Program.

8 b. Condition 9 states that Respondent, during the period of probation, shall  
9 report in person at interviews/meetings as directed by the Board or its designated representatives.

10 c. Condition 11 states, in pertinent part, that Respondent, during the period  
11 of probation, shall submit such written reports/declarations and verification of actions under  
12 penalty of perjury, as are required. These declarations shall contain statements relative to  
13 Respondent's compliance with all the terms and conditions of the Board's Probation Program.

14 d. Condition 20 states, in pertinent part, that Respondent, at his expense,  
15 shall participate in a random Board-approved biological fluid testing or drug screening program.  
16 The length of time and frequency will be subject to approval by the Board. Respondent is  
17 responsible for ensuring that reports are submitted directly by the testing agency to the Board, as  
18 directed. In addition, Respondent, at any time during the period of probation, shall fully  
19 cooperate with the Board or any of its representatives, and shall, when requested, submit to such  
20 tests and samples as the Board or its representatives may require for the detection of alcohol,  
21 narcotics, hypnotics, dangerous drugs, or other controlled substances.

#### 22 CAUSES TO REVOKE PROBATION

23 4. Grounds exist to revoke Respondent's probation and reimpose the order of  
24 revocation in that Respondent has failed to comply with the conditions of his probation in the  
25 following respects:

26 a. Respondent failed to appear at his probation interviews/meetings  
27 scheduled for August 16, 2000, and January 24, 2001, as directed by the Board's representatives  
28 (Condition 9).

1           b.     Respondent has failed to submit written reports, declarations and/or other  
2 documentation to the Board's representatives explaining why he was unable to submit urine  
3 specimens for screening on January 2, 2001, January 29, 2001, February 15, 2001, July 16, 2001,  
4 and September 24, 2001, as directed by the Board's representatives. Further, Respondent failed  
5 to submit written reports, declarations and/or other documentation explaining why he waited  
6 more than 24 hours to submit urine specimens for screening as requested by the Board's  
7 representatives. Respondent reported for screening at 9:35 a.m. on December 29, 2000, when he  
8 was requested to screen at 11:40 a.m. on December 26, 2000; and reported for screening at 2:15  
9 p.m. on May 24, 2002, when he was requested to screen at 9:09 a.m. on May 23, 2002  
10 (Condition 11). 8/21/02

11           c.     Respondent failed to participate in random, biological fluid testing or drug  
12 screens as directed by the Board's representatives on January 2, 2001, January 29, 2001,  
13 February 15, 2001, July 16, 2001, and September 24, 2001. Further, Respondent failed to submit  
14 to random drug screening within 24 hours as directed by the Board's representatives in that he  
15 reported for screening at approximately 9:35 a.m. on December 29, 2000, when he was requested  
16 to screen at 11:40 a.m. on December 26, 2000; and reported for screening at approximately 2:15  
17 p.m. on May 24, 2002, when he was requested to screen at 9:09 a.m. on May 23, 2002  
18 (Condition 20). 8/21/02 by spm submitted GFS

19           d.     Respondent has failed to fully comply with the terms and conditions of his  
20 probation program and cooperate with the Board's representatives in their monitoring and  
21 investigation of Respondent's compliance with the program as set forth in subparagraphs (a)  
22 through (c) above (Condition 8).

### 23                   PRAYER

24                   WHEREFORE, Complainant requests that a hearing be held on the matters herein  
25 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

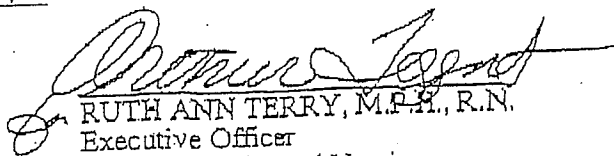
26           1.     Revoking the probation that was granted by the Board of Registered  
27 Nursing in Case Number 98-175 and imposing the disciplinary order that was stayed thereby  
28 revoking Registered Nurse License Number 370543 issued to Darryl Stanley Mitchell;

1                   2.     Revoking or suspending Registered Nurse License Number 370543, issued  
2 to Darryl Stanley Mitchell;

3                   3.     Ordering Darryl Stanley Mitchell to pay the Board of Registered Nursing  
4 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
5 Professions Code section 125.3;

6                   4.     Taking such other and further action as deemed necessary and proper.

7 DATED: June 10, 2002

8   
9 RUTH ANN TERRY, M.P.H., R.N.  
Executive Officer

10 Board of Registered Nursing  
11 Department of Consumer Affairs  
State of California

12 Complainant  
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1 BILL LOCKYER, Attorney General  
of the State of California  
2 CHRISTINA M. NEBELING, State Bar No. 171168  
Department of Justice  
3 300 South Spring Street  
Los Angeles, California 90013  
4 Telephone: (213) 897-2557  
5 Attorneys for Complainant

6  
7  
8 BEFORE THE  
BOARD OF REGISTERED NURSING  
9 DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA  
10

11 In the Matter of the Accusation ) NO. 98-175  
Against: )  
12 ) STIPULATED SETTLEMENT  
DARRYL STANLEY MITCHELL ) AND DISCIPLINARY ORDER  
13 24341 St. Thomas Avenue )  
Moreno Valley, CA 92551 )  
14 Registered Nurse License )  
No. 370543, )  
15 Respondent. )  
16

17 IT IS HEREBY STIPULATED AND AGREED by and between the  
18 parties to the above-entitled proceedings that the following  
19 matters are true:  
20 1. An Accusation, No. 98-175, is currently pending.  
21 against Darryl Stanley Mitchell, R.N. (hereinafter "Respondent").  
22 Said Accusation having been filed with the Board on June 11,  
23 1998.  
24 2. The Accusation, together with all other  
25 statutorily required documents, was duly served on Respondent on  
26 or about August 26, 1998, and Respondent filed his Notice of  
27 Defense contesting the Accusation on or about August 6, 1996. A

1 copy of Accusation No. 98-175 is attached as Attachment "A" and  
2 incorporated by reference as if fully set forth.

3 3. The Complainant, Ruth Ann Terry, M.P.H., R.N., was  
4 the Executive Officer of the Board of Registered Nursing  
5 (hereinafter the "Board") and brought this action solely in her  
6 official capacity.

7 4. At all times relevant herein, Respondent has been  
8 licensed by the Board of Registered Nursing under Registered  
9 Nurse License No. 370543.

10 5. Respondent understands the nature of the charges  
11 alleged in the Accusation as constituting cause for imposing  
12 discipline upon his license to practice as a registered nurse.  
13 Respondent is fully aware of his right to a hearing on the  
14 charges and allegations contained in said Accusation, his right  
15 to confront and cross-examine witnesses against him, his right to  
16 reconsideration, appeal, and all other rights accorded pursuant  
17 to the California Business and Professions Code and Government  
18 Code and, with this in mind, freely, voluntarily, and irrevocably  
19 waives such rights.

20 6. For purposes of resolution of this matter only,  
21 Respondent admits the truth of each and every allegation of  
22 Accusation No. 98-175, and agrees that Respondent has thereby  
23 subjected his license to disciplinary action. Respondent agrees  
24 to the Board's Disciplinary Order as set out in the Order below.

25 7. In consideration of the foregoing admissions and  
26 findings, the parties agree that the Board shall, without further  
27 notice or formal proceeding, issue and enter an Order as follows:



ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 370543 issued to Darryl Stanley Mitchell, R.N., is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions:

7. OBEY ALL LAWS

Respondent shall obey all federal, state, and local laws, and all rules and regulations of the Board of Registered Nursing governing the practice of nursing in California. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this term, Respondent shall submit completed fingerprint cards and fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

8. COMPLY WITH PROBATION PROGRAM

Respondent shall fully comply with the terms and conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of Respondent's compliance with the Program. Respondent shall inform the Board in writing within no more than fifteen (15) days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

\\ \\

1                   9.     REPORT IN PERSON

2                   Respondent, during the period of probation, shall  
3 report in person at interviews/meetings as directed by the Board  
4 or its designated representatives.

5                   10.    ABSENCE FROM STATE

6                   Periods of residency or practice outside of California  
7 will not apply to the reduction of this probationary term. The  
8 Respondent must provide written notice to the Board within  
9 fifteen (15) days of any change of residence or practice outside  
10 the state.

11                  11.    SUBMIT WRITTEN REPORTS

12                  Respondent, during the period of probation, shall  
13 submit such written reports/declarations and verification of  
14 actions under penalty of perjury, as are required. These  
15 declarations shall contain statements relative to Respondent's  
16 compliance with all the terms and conditions of the Board's  
17 Probation Program. Respondent shall immediately execute all  
18 release of information forms as may be required by the Board or  
19 its representatives.

20                  12.    FUNCTION AS A REGISTERED NURSE

21                  Respondent, during the period of probation, shall  
22 engage in the practice of professional nursing in California for  
23 a minimum of twenty-four (24) hours per week (or as determined by  
24 the Board) for six (6) consecutive months. Per section 2732 of  
25 the Business and Professions Code, no person shall engage in the  
26 practice of registered nursing without holding a license which is  
27 in an active status.

1           13.   NURSING PRACTICE

2           The Board shall be informed of, and approve of, each  
3 agency for which Respondent provides nursing services prior to  
4 Respondent's commencement of work. Respondent shall inform his  
5 employer of the reason for, and the terms and conditions of  
6 probation and shall provide a copy of the Board's Decision and  
7 Order to his employer and immediate supervisor. The employer  
8 shall submit performance evaluations and other reports as  
9 requested by the Board. Respondent is also required to notify  
10 the Board in writing within seventy-two (72) hours after  
11 termination of any nursing employment. Any notification of  
12 termination shall contain a full explanation of the circumstances  
13 surrounding it.

14           14.   SUPERVISION

15           The Board shall be informed of, and approve of, the  
16 level of supervision provided to Respondent while he is  
17 functioning as a registered nurse. The appropriate level of  
18 supervision must be approved by the Board prior to commencement  
19 of work. Respondent shall practice only under the direct  
20 supervision of a registered nurse in good standing (no current  
21 discipline) with the Board of Registered Nursing.

22           15.   EMPLOYMENT LIMITATIONS

23           Respondent may not work for a nurse registry; temporary  
24 nurse agency; home care agency; in-house nursing pool; as a  
25 nursing supervisor; as a faculty member in an approved school of  
26 nursing; or an instructor in a Board-approved continuing  
27 education program. Respondent must work only on regularly

1 assigned, identified, and predetermined worksite(s) with  
2 appropriate supervision as approved by the Board.

3 16. COMPLETE A NURSING COURSE

4 Respondent, at his expense, shall begin and  
5 successfully complete (a) course(s) in nursing as directed by the  
6 Board prior to engaging in the practice of nursing and prior to  
7 the end of the probationary term.

8 Respondent may be suspended from practicing nursing  
9 until the necessary coursework is completed. The content of such  
10 course(s), and the place and conditions of instruction, shall be  
11 specified by Board representatives at the time of the initial  
12 probation meeting based on the nature of the violation(s).  
13 Specific courses must be approved prior to enrollment.

14 Respondent must submit to the Board written proof of enrollment  
15 and proof of successful completion. Transcripts or certificates  
16 of completion must be mailed directly to the Board by the agency  
17 or entity instructing Respondent.

18 Home study or correspondence courses are not acceptable  
19 and will not be approved.

20 17. PHYSICAL EXAMINATION

21 Respondent, at his expense, within 45 (forty-five) days  
22 of the effective date of this Decision, shall have a licensed  
23 physician specializing in chemical dependency submit, in a format  
24 acceptable to the Board, an assessment of Respondent's physical  
25 condition and capability to perform the duties of a professional  
26 registered nurse. If medically determined, a recommended  
27 treatment program will be instituted and followed by Respondent

1 with the physician providing written reports to the Board on  
2 forms provided by the Board.

3 18. REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE

4 Respondent, at his expense, shall successfully complete  
5 a treatment/rehabilitation program of at least six (6) months  
6 duration approved by the Board. Reports shall be submitted by  
7 the program on forms provided by the Board. If Respondent has  
8 not completed a treatment program prior to the commencement of  
9 probation, Respondent, within a reasonable period of time as  
10 determined by the Board, but not exceeding 45 (forty-five) days  
11 from the effective date of the Decision, shall be enrolled in a  
12 treatment program. If a treatment program is not successfully  
13 completed within the first nine (9) months of probation, the  
14 Board will consider Respondent to be in violation of probation  
15 and will initiate further disciplinary action against  
16 Respondent's license.

17 In addition, Respondent must attend two "twelve-step"  
18 recovery meetings per week (e.g. Narcotics Anonymous, Alcoholic  
19 Anonymous, etc.) and a nurse support group as directed by the  
20 Board. If a nurse support group is not available, an additional  
21 "twelve-step" meeting must be added. Respondent must submit  
22 dated and signed documentation confirming such attendance to the  
23 Board during the entire period of probation.

24 19. ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING)  
25 DRUGS

26 Respondent shall completely abstain from the  
27 possession, injection, or consumption by any route of all

1 psychotropic (mood-altering) drugs, including alcohol, except  
2 when the same are lawfully prescribed by a licensed physician or  
3 dentist as part of documented medical treatment. Respondent  
4 shall have sent to the Board within fourteen (14) days, by the  
5 prescribing physician or dentist, a written report identifying  
6 the medication, dosage, the date the medication was prescribed,  
7 Respondent's prognosis, and the date the medication will no  
8 longer be required.

9           Respondent shall identify for the Board the single  
10 physician who shall be informed of Respondent's history of  
11 substance abuse. Respondent shall fully cooperate with the  
12 physician to coordinate and monitor any prescriptions for  
13 dangerous drugs, controlled substances, or mood-altering drugs  
14 prescribed to Respondent. The coordinating physician must report  
15 to the Board on a quarterly basis Respondent's compliance with  
16 this condition and a program for the time-limited use of any  
17 addictive substances. The Board may require that the single  
18 coordinating physician be a specialist in addictive medicine.

19           20. SUBMIT TO TESTS AND SAMPLES

20           Respondent, at his expense, shall participate in a  
21 random Board-approved biological fluid testing or drug screening  
22 program. The length of time and frequency will be subject to  
23 approval by the Board. Respondent is responsible for ensuring  
24 that reports are submitted directly by the testing agency to the  
25 Board, as directed. Any confirmed positive finding shall be  
26 reported immediately to the Board by the program and Respondent  
27 will be considered in violation of probation.

1           In addition, Respondent, at any time during the period  
2 of probation, shall fully cooperate with the Board or any of its  
3 representatives, and shall, when requested, submit to such tests  
4 and samples as the Board or its representatives may require for  
5 the detection of alcohol, narcotics, hypnotics, dangerous drugs,  
6 or other controlled substances.

7           If, while on probation, Respondent submits a positive  
8 drug screen for any substance, including alcohol, not prescribed  
9 by a physician or dentist and reported to the coordinating  
10 physician, Respondent's license shall be immediately suspended  
11 and the Board shall file either a Petition to Revoke Probation or  
12 an Accusation against Respondent's license. Respondent's license  
13 shall remain suspended pending the final decision on the Petition  
14 to Revoke Probation or Accusation.

15           21. MENTAL HEALTH EXAMINATION

16           Respondent shall, within forty-five (45) days of the  
17 effective date of this Decision, have a mental health examination  
18 including psychological testing as appropriate to determine his  
19 capability to perform the duties of a registered nurse. The  
20 examination will be performed by a psychiatrist, psychologist, or  
21 other licensed mental health practitioner approved by the Board.  
22 The examining mental health practitioner will submit a written  
23 report of that assessment and attendant recommendations to the  
24 Board. All costs are the responsibility of Respondent.  
25 Recommendations for treatment, therapy, or counseling made as a  
26 result of the mental health examination will be instituted and  
27 followed by Respondent.

1                   22. THERAPY OR COUNSELING PROGRAM

2                   Respondent, at his expense, shall participate in an  
3 ongoing counseling program until such time as the Board releases  
4 him from this requirement and only upon the recommendation of the  
5 counselor. Written progress reports from the counselor will be  
6 required at various intervals.

7                   23. VIOLATION OF PROBATION

8                   If Respondent violates the conditions of his probation,  
9 the Board, after giving Respondent notice and an opportunity to  
10 be heard, may set aside the stay order and impose the stayed  
11 discipline (revocation/suspension) of Respondent's license.

12                  If during the period probation, an Accusation or  
13 Petition to Revoke Probation has been filed against Respondent's  
14 license or the Attorney General's Office has been requested to  
15 prepare an Accusation or Petition to Revoke Probation against  
16 Respondent's license, the probationary period shall automatically  
17 be extended and shall not expire until the Accusation or Petition  
18 has been acted upon by the Board. Upon successful completion of  
19 probation, Respondent's license will be fully restored.

20                  24. COMPLETION OF PROBATION

21                  Respondent's license shall be fully restored upon  
22 successful completion of probation.

23                  25. COST RECOVERY

24                  Respondent shall make cost recovery to the Board  
25 pursuant to Business and Professions Code Section 125.3. Such  
26 payment shall be made payable to the Board of Registered Nursing

27 \ \ \



1 by certified check or money order on the face of which indicates  
2 that this is cost recovery in Case No. 98-175.

3 26. Respondent agrees to pay in full satisfaction of  
4 costs the above-said payments pursuant to the above-said  
5 schedule.

6 28. The within Stipulation shall be subject to the  
7 approval of the Board. If the Board fails to adopt this  
8 Stipulation as its Order, the Stipulation shall be of no force or  
9 effect for either party.

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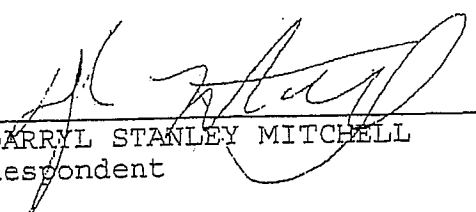
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27

ACCEPTANCE

I have carefully read and fully understand the Stipulation and Order set forth above. I understand that in signing this Stipulation I am waiving my right to a hearing on the charges set forth in the Accusation on file in this matter. I further understand that in signing this Stipulation the Board shall enter the foregoing Order placing certain requirements, restrictions, and limitations on my right to practice as a Registered Nurse in the State of California.

  
DARRYL STANLEY MITCHELL  
Respondent

\* \* \* \* \*

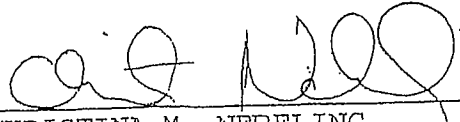
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ENDORSEMENT

I concur in the Stipulation and Order.

DATED: 11/29/99.

BILL LOCKYER, Attorney General  
of the State of California  
CHRISTINA M. NEBELING,  
Deputy Attorney General



CHRISTINA M. NEBELING  
Deputy Attorney General

Attorneys for Complainant

\* \* \* \* \*

DECISION AND ORDER  
OF THE BOARD

The foregoing Stipulation and Order, in No. 98-175, is hereby adopted as the Order of the California Board of Registered Nursing. An effective date of May 14, 2000, has been assigned to this Decision and Order.

Made this 14th day of April, 2000

*Sandra L. Erickson for Mary Jo Barney-Moreno*  
RUTH ANN TERRY, M.P.H., R.N.  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
Complainant

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1 DANIEL E. LUNGREN, Attorney General  
of the State of California  
2 CHRISTINA M. NEBELING,  
Deputy Attorney General, State Bar No. 171168  
3 Department of Justice  
300 South Spring Street, Suite 500  
4 Los Angeles, California 90013  
Telephone: (213) 897-2559  
5  
Attorneys for Complainant  
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7

8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation ) NO. 98-175  
Against: )  
12 ) ACCUSATION  
DARRYL STANLEY MITCHELL )  
13 14533 Aprilia Avenue )  
Compton, California 90220 )  
14 Registered Nurse License )  
No. 370543 )  
15 Respondent. )  
16

17 Ruth Ann Terry, M.P.H., R.N., alleges:

18 1. Complainant Ruth Ann Terry, M.P.H., R.N., makes  
19 and files this Accusation in her official capacity as Executive  
20 Officer, Board of Registered Nursing, (hereinafter the "Board"),  
21 Department of Consumer Affairs, State of California.

22 2. On March 31, 1984, the Board of Registered Nursing  
23 issued registered nurse license number 370543 to Darryl Stanley  
24 Mitchell (hereinafter "Respondent"). The license was in full  
25 force and effect at all times pertinent herein and will expire on  
26 April 30, 2000, unless renewed.

27 \ \ \

1           3. Pursuant to Business and Professions Code  
2 (hereinafter the "Code") section 2750, the Board may discipline  
3 any licensee, including a licensee holding a temporary or an  
4 inactive license, for any reason provided in Article 3 of the  
5 Nursing Practice Act.

6           4. Pursuant to section of the Code, failure by a  
7 licentiate to comply with an order issued under section 820 shall  
8 constitute grounds for the suspension or revocation of the  
9 licentiate's certificate or license.

10           5. Pursuant to section 2761(f) of the Code, the Board  
11 may take disciplinary action against a licensed nurse for a  
12 conviction of a felony or of any offense substantially related to  
13 the qualifications, functions, and duties of a registered nurse,  
14 in which event the record of the conviction shall be conclusive  
15 evidence thereof.

16           6. Pursuant to section 490 of the Code, the Board may  
17 suspend or revoke a license when it finds that the licensee has  
18 been convicted of a crime, if the crime is substantially related  
19 to the qualifications, functions, or duties of a registered  
20 nurse. A conviction within the meaning of this section means a  
21 plea or verdict of guilty or a conviction following a plea of  
22 nolo contendere.

23           7. Section 125.3 of the Code provides, in part, that  
24 the Board may request the administrative law judge to direct any  
25 licentiate found to have committed a violation or violations of  
26 \ \ \  
27 \ \ \

1 the licensing act, to pay the Board a sum not to exceed the  
2 reasonable costs of the investigation and enforcement of the  
3 case.

4 I

5 FAILURE TO COMPLY

6 8. Respondent has subjected his license to discipline  
7 pursuant to section 821 in that Respondent failed to comply with  
8 an Order issued pursuant to section 820 of the Code. On October  
9 18, 1996, an Order was issued by the Board pursuant to a Petition  
10 for An Order to Compel Psychiatric Examination filed by  
11 Complainant to submit to an examination.

12 II

13 CONVICTION OF SUBSTANTIALLY RELATED CRIMES

14 9. Respondent has subjected his license to discipline  
15 pursuant to Business and Professions Code sections 2761(f) and  
16 490 in that Respondent was convicted of crimes substantially  
17 related to the qualifications, functions, or duties of a  
18 registered nurse, by reason of the following:

19 A. On April 19, 1984, Respondent was convicted by the  
20 Court on a plea of nolo contendere to one count of violation  
21 of section 23152(a) of the Vehicle Code (driving under the  
22 influence of drugs or alcohol) in the Municipal Court, Los  
23 Angeles Judicial District, County of Los Angeles, Case No.  
24 V182833, entitled People of the State of California v.  
25 Darryl Stanley Mitchell.

26 The circumstances surrounding the conviction are  
27 that on or about April 7, 1984, Respondent drove a motor

1 vehicle on a public street in the County of Los Angeles  
2 while being under the influence of alcohol.

3 B. On August 26, 1986, Respondent was convicted by  
4 the Court on a plea of guilty to one count of violation of  
5 section 23152(a) of the Vehicle Code (driving under the  
6 influence of drugs or alcohol) in the Municipal Court of  
7 Inglewood Judicial District, case No. M220009, entitled  
8 People of the State of California v. Darryl Stanley  
9 Mitchell.

10 The circumstances surrounding the conviction are  
11 that on or about June 6, 1986, Respondent drove a motor  
12 vehicle on a public street in the County of Los Angeles  
13 while being under the influence of alcohol.

14 C. On June 28, 1990, Respondent was convicted by the  
15 Court on a plea of guilty to one count of violation of  
16 section 23152(a) of the Vehicle Code (driving under the  
17 influence of drugs or alcohol) in the Municipal Court,  
18 Sacramento Municipal Court District, County of Sacramento,  
19 case No. 90T03885, entitled People of the State of  
20 California v. Darryl Stanley Mitchell.

21 The circumstances surrounding the conviction are  
22 that on or about May 2, 1990, Respondent drove a motor  
23 vehicle on a public street in the County of Sacramento while  
24 being under the influence of alcohol.

25 D. On January 31, 1992, Respondent was convicted by  
26 the Court on a plea guilty to one count of violation of  
27 section 23152(b) of the Vehicle Code (driving a motor



1 vehicle while having a blood alcohol level of .08 or more and  
2 admitting four prior convictions, a felony) in the Municipal  
3 Court of the Riverside Judicial District, County of  
4 Riverside, Case No. CR 42271, RMC 21376, entitled People of  
5 the State of California v. Darryl Stanley Mitchell.

6 The circumstances surrounding the conviction are  
7 that on or about February 21, 1991 Respondent drove a motor  
8 vehicle on a public street in the County of Riverside while  
9 having a blood alcohol level of .08 percent or greater.

10 WHEREFORE, Complainant prays that a hearing be held and  
11 that following said hearing that the Board of Registered Nursing  
12 make its Order:

13 1. Revoking or suspending registered nurse license  
14 number 370543, issued to Darryl Stanley Mitchell.

15 2. Issue an Order compelling the Respondent to  
16 reimburse the Board for the reasonable costs of its  
17 investigation, enforcement, and prosecution of this matter, up to  
18 the day of hearing.

19 3. Taking such other and further action as the Board  
20 deems proper.

21 DATED: June 11, 1998

22 Ruth Ann Terry  
23 Ruth Ann Terry, M.P.H., R.N.  
24 Executive Officer  
25 Board of Registered Nursing  
26 Department of Consumer Affairs  
27 State of California

Complainant

CMN:lms  
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